

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

LINDSEY TAYLOR HOPE,  
Plaintiff,  
v.  
CAROLYN W. COLVIN,  
Defendant.

Case No. [5:13-cv-02240-HRL](#)

**INTERIM ORDER RE MOTION FOR  
ATTORNEY'S FEES**

Re: Dkt. No. 31

Lindsey Taylor Hope filed this action, seeking judicial review of the Commissioner's decision denying her application for Supplemental Security Income under Title XVI of the Social Security Act. The parties subsequently stipulated to remand the matter. Upon remand, this court is told that the Commissioner awarded Hope past-due benefits.

Linda Ziskin, Lindsey Hope's counsel, moves for an award of fees for work performed by herself and by Hope's other attorney, Cynthia Starkey.<sup>1</sup> The Commissioner filed a statement purportedly taking no position as to the reasonableness of the requested fee, but noting several factors for the court's consideration.<sup>2</sup> First, the Commissioner points out that there is no

<sup>1</sup> The motion is based on 42 U.S.C. § 406(b), which governs fee awards in cases concerning claims for disability benefits under Title II of the Social Security Act. Nevertheless, Title XVI of the Act "incorporates § 406(b) by reference and applies in largely the same manner." Mellon v. Astrue, No. C06-0638 EMC, 2008 WL 512720 at \*1 (N.D. Cal., Feb. 25, 2008) (citing 42 U.S.C. § 1383(d)(2)).

<sup>2</sup> The Commissioner has no direct financial stake in the motion for fees, but instead "plays a part

1 indication that the fees motion was served on Hope. Second, the Commissioner notes that, while  
 2 counsel claims to have spent approximately 31 hours on this matter, the documents appended to  
 3 the motion show only that Starkey spent 2.6 hours on this case. Third, the Commissioner observes  
 4 that there are no declarations authenticating the documents submitted in support of the motion. In  
 5 reply, Ziskin “declares, under penalty of perjury” that a document appended to the reply brief  
 6 shows the time she spent on this matter. Additionally, Ziskin says that a copy of the motion  
 7 papers was mailed to Hope in the ordinary course of business, but otherwise argues that there is no  
 8 authority requiring service of the papers on Hope or the submission of formal declarations in  
 9 support of the fees motion.

10 The Commissioner’s observations are well taken. Courts in this district require service of  
 11 these kinds of motions on the claimants. See, e.g., Cunningham v. Astrue, No. 3:10-cv-04313-LB,  
 12 2015 WL 6694097 at \*1 (N.D. Cal., Nov. 3, 2015) (requiring counsel to serve his motion for fees  
 13 on the claimant); Atkins v. Astrue, No. C 10-0180 PJH, 2012 WL 5350265, at \*5 (N.D. Cal. Oct.  
 14 29, 2012) (describing counsel’s failure to show that the plaintiff received notice of the fees motion  
 15 as a “deficiency” and denying the motion partly for this reason). Cf. Dellapietra v. Colvin, No.  
 16 11-cv-04697-JCS, 2013 WL 5863017, at \*1 (N.D. Cal. Oct. 30, 2013) (noting that the plaintiff’s  
 17 counsel served the motion for fees on the plaintiff and that the plaintiff did not appear or file any  
 18 objection to the motion). Additionally, courts have required supporting declarations, see  
 19 Cunningham, 2015 WL 6694097 at \*1, which are particularly important for these types of motions  
 20 that hinge almost entirely on the submitted exhibits.

21 Accordingly, no later than September 16, 2016, Hope’s counsel must file declaration(s)---  
 22 whether by Starkey, Ziskin, or a different declarant---(1) attesting to service of the motion papers  
 23 and all supporting briefs and exhibits on Hope and (2) sufficiently authenticating the exhibits  
 24  
 25  
 26

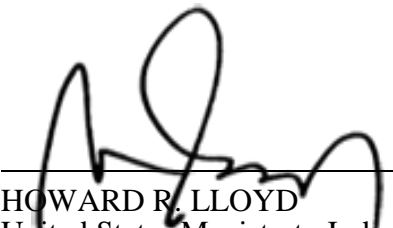
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27 in the fee determination resembling that of a trustee for the claimants.” Gisbrecht v. Barnhart, 535  
 28 U.S. 799, 798 n.6 (2002); see also Crawford v. Astrue, 586 F.3d 1142, 1144 n.2 (9th Cir. 2009)  
 (same).

submitted in support of the motion.

SO ORDERED.

Dated: September 6, 2016



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HOWARD R. LLOYD  
United States Magistrate Judge

United States District Court  
Northern District of California

5:13-cv-02240-HRL Notice has been electronically mailed to:

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